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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/647,125

08/25/2003

Byoung-Woo Cho

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21171 7590 08/07/2007  
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EXAMINER

MORAN, KATHERINE M

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

08/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/647,125

**Applicant(s)**

CHO, BYOUNG-WOO

**Examiner**

Katherine Moran

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/16/04, 11/22/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/27/07 has been entered. Upon further consideration, the allowability of claim 10 is withdrawn. The amendment of 5/29/07 is entered, with claims 1-21 pending.

### ***Claim Objections***

2. Claims 5 and 9 are objected to because of the following informalities: claim 5, line 2: there is no claim antecedent for "the bottom"; claim 9, line 5: insert --the front part-- before "inclining". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 recites that the front part of the headband inclines toward a center of the crown. It is unclear what associated structure results in

the front part inclining toward a crown center. Claim 1, from which claim 3 depends, does not recite any structure which results in the inclining feature.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-3, 6-13, and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kronenberger (U.S. 5,983,398). Kronenberger discloses the invention as claimed. Kronenberger teaches headgear comprising a cap 10 having a fixed size crown/sunshield 12 and an elastic visor 14, and a headband attached to the crown and comprising a front part 38 formed of stretchable material and a rear part 58, behind the front part in a circumferential direction of the headband, formed of a non-stretchable

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material. It is noted that depending upon which direction the cap is viewed from, either opposing portion of the cap could define the "front" or the "rear" since claim 1 does not define the front and rear parts in relation to the visor. The front and rear parts form a continuous loop as shown in Figures 2-4. The front part 38 comprises a bottom edge in contact with the crown and in tension since the bottom edge is stitched at 48 to the crown portion 20. The front part of the headband is stretched and sewn to the crown along a bottom peripheral edge of the crown and a bottom edge of the front part. Since only the bottom edge of the front part is stitched to the crown, the top edge is free to incline toward a center of the crown. The term "stretched" is not given patentable weight in interpreting an apparatus claim, since it recites a process. The front part is capable of being stretched. The visor includes a bill portion extending outside the crown as shown in the drawings and an extended portion 66 extending into the crown. Claims 18-21 recite a method of making a headgear which is taught by Kronenberger.

7. Claims 1-3, 6, 7, 9, 11-13, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Cunliffe (U.S. 5,966,742). Cunliffe discloses the invention as claimed. Cunliffe teaches headgear 10 comprising a cap having a crown or sunshield 12 and a visor 15 and a headband attached to the crown and comprising a front part 18 formed of stretchable material and a rear part 16, behind the front part in a circumferential direction of the headband, formed of a non-stretchable material. The front and rear parts form a continuous loop. It is noted that the terms "front" and "rear" are relevant terms and either of the headband parts could be called the front or the rear part. Claim 1 does not outline the position of the respective front or rear parts in relation

to the other cap portions. The front part of the headband comprises a bottom edge in stitched contact with the crown and in tension as recited in col.2, lines 36-38. The front part would inherently be stretched during the process of attaching its bottom edge to the bottom peripheral crown edge. Since this stretching is a step of assembling the cap structure, it is not given patentable weight in an apparatus claim. The crown is a fixed size in that it will maintain a particular size and the claims have not recited any associated structure associated with the fixed size recitation. Regarding claim 3, since only the bottom edge of the front part is stitched to the crown, and the top edge of the front part is free, it stands to reason that the front part of the headband would incline toward a center of the crown.

8. Claims 1, 4, 5, 11, and 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Young (U.S. 6,546,563). Young discloses the invention as claimed. Young teaches headgear comprising a cap having a crown or sunshield 10, visor 30 and a headband attached to the crown and comprising a front part 24 formed of stretchable material and a rear part 22 behind the front part in a circumferential direction of the headband formed of a non-stretchable material, the front and rear parts forming a continuous loop. The front part extends circumferentially in the crown along the bottom to edges of the visor as shown in Figure 4. Regarding claim 5, the front part 24 could also be considered as extending circumferentially in the crown along the bottom beyond edges of the visor since certain portions of the front part are positioned beyond edges of the visor in a circumferential direction as shown in Figures 3 or 4.

***Response to Arguments***

9. Applicant's remarks do not include any comments regarding the prior art rejections.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch, may be reached at (571) 272-4996. The official and after final fax number for the organization where this application is assigned is (571) 273-8300. General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Kmm

August 1, 2007

A handwritten signature in black ink, appearing to read "K Moran", with a stylized, cursive script.

Katherine Moran

Primary Examiner, AU 3765